Supreme Court, U.S.
FILED

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No. _____

IN THE SUPREME COURT
OF THE
UNITED STATES

October Term, 1999

HILLCREST DEVELOPMENT,
a California Limited Partnership,
Petitioner,
vs.
COUNTY OF RIVERSIDE, a Public Entity;
R. WAYNE WATTS, Treasurer-Tax Collector
of the County of Riverside;
N.R.L.L., INC., a California Corporation;
SPAN, L.L.C., a Limited Liability Company,
Respondents.

Petition for Writ of Certiorari
To The Court of Appeal of California
Fourth District, Division Two

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

WHERE NO ANTICIPATORY TAX RELIEF IS SOUGHT BY A PROPERTY OWNER, ARE A MUNICIPALITY AND ITS TAX COLLECTOR WHO DEPRIVED THE PROPERTY OWNER OF HIS REAL PROPERTY WITHOUT DUE PROCESS WHOLLY IMMUNE FROM SUIT UNDER 42 U.S.C. §1983 AS THE RESULT OF THE "PRINCIPLE OF COMITY" AND THE "TAX INJUNCTION ACT".

ARE PRIVATE PERSONS WHO PARTICIPATE WITH A MUNICIPALITY AND ITS TAX COLLECTOR IN THE DEPRIVATION OF REAL PROPERTY IN VIOLATION OF THE DUE PROCESS CLAUSE WHOLLY IMMUNE FROM SUIT UNDER 42 U.S.C. §1983 AS A RESULT OF THE "PRINCIPLE OF COMITY" AND THE "TAX INJUNCTION ACT".

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the Court below. Rule 29.6 of the Rules of the Supreme Court does not apply in that the Petitioner is a limited partnership.

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PETITION FOR WRIT OF CERTIORARI
To The Court of Appeal of California
Fourth District, Division Two

Petitioner, HILLCREST DEVELOPMENT ("Hillcrest Development"), respectfully prays that a writ of certiorari issue to review the judgment of the California Court of Appeal, for the Fourth District, Division Two, entered in the above-entitled case on November 9, 1999 and in which discretionary review was denied by the California Supreme Court on February 2, 2000.

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS

There are no official or unofficial reports. The Opinion of the Court of Appeal of California is set forth in its entirety in the Appendix.

STATEMENT OF JURISDICTION

1. The Petition Has Been Filed Within 90 Days of the Denial of Discretionary Review by the California Supreme Court.

On February 2, 2000, the California Supreme Court denied discretionary review of the judgment of the Court of Appeal which had been entered on November 9, 1999. No rehearing was requested and no extension of time to file the Petition has been sought.

2. The Statutory Provision Conferring Jurisdiction Upon This Court to Review on a Writ of Certiorari the Judgment.

The statutory provision conferring jurisdiction on this Court jurisdiction to review on a Writ of Certiorari the judgment and orders in question is 28 U.S.C. §1257(a).

3. Compliance With Rule 29.4(b) or (c) of the Rules of the Supreme Court.

Notice is not required under Rule 29.4(b) or 29.4(c) of the Rules of the Supreme Court.

CONSTITUTIONAL PROVISIONS, TREATISES, STATUTES, RULES AND REGULATIONS INVOLVED

Section 1 of AMENDMENT XIV to the United States Constitution:

> **"Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State, wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. §1983

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of

Columbia shall be considered to be a statute of the District of Columbia."

28 U.S.C. § 1341

"The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

STATEMENT OF THE CASE

1. INTRODUCTION

Without providing Hillcrest Development with notice of the tax sale as required by the Due Process Clause, Respondents County of Riverside, a municipality ("County of Riverside"), and R. Wayne Watts, its tax collector ("Tax Collector"), sold Hillcrest Development's million dollar real property for about 15% of its value at the tax sale to Respondent N.R.L.L., Inc. As a result of the tax sale, all delinquent property taxes were paid. Within a month of discovering that its property had been sold, Hillcrest Development sought to recover the property through a civil rights action brought under the provisions of 42 U.S.C. §1983. It did not seek any anticipatory relief as to any tax or to stop, enjoin, suspend or restrain the collection of taxes. It did not question the validity of the tax that was collected or its amount. Regardless, the California Court of Appeal ruled that the Respondents are wholly immune from a suit under 42 U.S.C. §1983 as a result of this Court's decisions in Fair Assessment in Real Estate Assn. v. McNary, 454 U.S. 100 (1981) and National Private Truck Council, Inc. v. Oklahoma Tax Commissioner, 515 U.S. 582 (1995).

As a result of the California Court of Appeal's decision, Hillcrest Development and similarly situated property owners in the County of Riverside have no remedy for the failure of the County of Riverside and the Tax Collector to provide notice as required by the Due Process Clause prior to the deprivation of their property.

2. STAGE AS TO WHEN THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED AND HOW THEY WERE PASSED UPON BY THE COURTS

The federal questions were first raised in the Complaint filed by Hillcrest Development when it sought relief under the Civil Rights Act [42 U.S.C. §1983] to invalidate the tax deed or for damages as a result of the violation of Hillcrest Development's right to Due Process. The defendants sought summary judgment based upon a claim that the action was barred by Section 3725 of the California Revenue and Taxation Code. Hillcrest asserted that the applicable statute of limitations was the California personal injury statute based upon this Court's determination in Wilson v. Garcia, 471 U.S. 261 (1985). The places in the record where the matters appear are the Complaint filed by Hillcrest Development, the Motion for Summary Judgment filed by the County of Riverside and Tax Collector, the Opposition to the Motion filed by Hillcrest Development, and the Order granting the Motion for Summary Judgment.

On appeal, and in their Brief, the County of Riverside and the third party defendants raised for the first time the claim that this Court's decision in Fair Assessment, supra, and National Private Truck, supra, barred a §1983 suit against a municipality and its Tax Collector as a matter of law. The Court of Appeal determined that, though Hillcrest Development was correct as to the applicable statute of limitations, the §1983 action was nevertheless barred by the principles established by this Court in Fair Assessment and National Private Truck. The place where the determination was made by the Court of Appeal is at pages A-19 - A-22 [Appendix] of its Opinion.

The federal questions were raised again in Hillcrest Development's Petition for Review in the California Supreme Court, which Petition was summarily denied.

3. STATEMENT OF FACTS

The Statement of Facts is based upon undisputed facts or facts accepted as true for purposes of deciding the Motion for Summary Judgment brought by the Tax Collector and the County of Riverside.

On March 26, 1996, and without actual notice to Petitioner Hillcrest Development, the Tax Collector sold Hillcrest Development's tax defaulted real property to N.R.L.L. The County of Riverside and the Tax Collector failed to make a reasonable effort to obtain either Hillcrest Development's last known address or even the phone number and address of its general partner ("General Partner"), whose name and county of residence were known to the Tax Collector, as well as the County of Riverside, and whose phone number and address were listed in the phone directory of the County of residence, which County (Orange) adjoined the County of Riverside. The fictitious business statement filed by Hillcrest Development in Orange County also listed its correct address and phone number. Other information was also in the possession of the County of Riverside or the Tax Collector which would have enabled either of them to ascertain the current address of Hillcrest Development, its General Partner, or counsel for Hillcrest Development.

In September of 1997, the General Partner discovered a "for sale" sign on Hillcrest Development's real property, which was located in the City of Elsinore, County of Riverside. Upon calling the number on the "for sale" sign, the General Partner learned that N.R.L.L. had purchased the real property

for about 15% of its million dollar value at the tax sale in 1996. The General Partner immediately contacted the representative of the Tax Collector, informed him that neither Hillcrest Development nor the General Partner had received any notice of the tax sale, and requested that the tax sale be rescinded and that its real property be returned. When the Tax Collector refused to take any action and within one month of discovering the "for sale" sign, Hillcrest Development filed a civil rights action under Section 1983 of Title 42 of the United States Code to set aside the Tax Deed, quiet title, and for damages. The action was based upon the requirement established by this Court in Mennonite Board of Missions v. Adams, 462 U.S. 791, 800 (1983), that actual notice be provided of the tax sale by the taxing authorities, prior to depriving the interested party of his property rights, even if an interested party is in default with respect to property taxes and should have protected itself, so long as the interested party's address is "reasonably ascertainable" by the taxing authorities. The civil rights action of Hillcrest Development named as defendants the Tax Collector, the County of Riverside, and the purchasers of the real property.

In its civil rights action, Hillcrest Development did not seek a refund of any tax and did not seek to enjoin, suspend or restrain the collection of any tax.

After the answer was filed by the Respondents, the County of Riverside and Tax Collector filed a Motion for Summary Judgment based upon the assertion that, regardless of the conduct of the Tax Collector and regardless of whether a property owner's Due Process rights were violated, a property owner is time barred from bringing any type of action to invalidate the Tax Deed or recover damages unless brought within one year of the execution of a tax deed. This assertion was based upon Section 3725 of the California Revenue &

Taxation Code. None of the Defendants asserted in the Motion for Summary Judgment that the action was precluded by the principle of comity or by the "Tax Injunction Act".

Though Hillcrest Development asserted that the applicable statute of limitations for the civil rights action is the personal injury statute or Section 340, subdivision 3, of the Code of Civil Procedure as a result of this Court's decision in Wilson v. Garcia, 471 U.S. 261 (1985), the trial court disagreed, and granted the Motion and dismissed the action as to all of the defendants. An appeal was timely filed.

On appeal, the Tax Collector and County of Riverside raised for the first time their assertion that "section 1983 does not afford a remedy in state tax cases". Page A-17, Appendix.

Though finding that the trial court committed error and that Respondents N.R.L.L and SPAN's claim that Wilson requires the Court to look to the most analogous statute of limitations "grossly misrepresents Wilson," it stated that the error was harmless in that a civil rights action could not be maintained in a tax case because of the potential "for a chilling effect on state tax administration that was a motivating concern in Fair Assessment". Page A-22, Appendix. It also concluded that, since the California tax scheme allowed for a refund of taxes, the "adequate remedy" exception to the principle of comity and the "Tax Injunction Act" did not apply. Page A-22, Appendix.

4. ARGUMENT

A. Summary of Reasons for Review by the Supreme Court

1. Conflict with Decisions of This Court and with Decisions of the United States Courts of Appeal

The California Court of Appeal has decided important federal questions in a way that conflict with decisions of the United States Courts of Appeals and with relevant decisions of this Court. By denying a remedy to a property owner who has been deprived of his property without notice, it has rendered ineffective the notice requirement in Mennonite, supra. It has misapplied the "Tax Injunction Act" (Jefferson County, Ala. v. Acker, 527 U.S. 423, 119 S.Ct. 2069, 2076 (1999)). It has changed the definitional meaning of "adequate remedy" in considering whether the exception to the "Tax Injunction Act" and principle of comity apply. See California v. Grace Brethren Church, 457 U.S. 393, 411-412 (1982). The Court of Appeal creates an absolute immunity not only for a county's tax collector, but also the municipality, which is contrary to this Court's decision in Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 166 (1993).

2. The Unpublished Decision May Still Be Used by the Tax Collector or the County of Riverside to Curtail Any Future Proceeding or Set Up a Defense of Reasonableness

Though the case was a case of first impression, and Hillcrest Development requested its publication in writing and at oral argument, the Court of Appeal issued its final Opinion as "Not to Be Published." In California, an unpublished opinion

has virtually no chance of being reviewed by the California Supreme Court. See 2 *California Civil Appellate Practice*, §22.7 (California Continuing Education of the Bar, 1999). The reason is because the case generally does not have precedential value. However, there are exceptions. Rule 977(b), California Rules of Court; 9 Witkin, *California Procedure*, Appeal §716 (4th ed. 1996). If another aggrieved property owner brings a civil rights action against the Tax Collector and County of Riverside, there can be no doubt that the Tax Collector would show the litigant the prior determination of the same Court of Appeal that would hear his appeal. The Tax Collector may also assert it as a basis for the "reasonableness" of his conduct in a subsequent civil rights case where he could assert qualified immunity.

Though the Opinion was not published, the case received notoriety in that it was reported in a newspaper serving Riverside County because of the nature of the action and the naming of the Tax Collector and County of Riverside as defendants.

3. In Order to Ensure National Uniformity, Only this Court Should Determine if Agencies Involved in Tax Collection Should be Entirely Immune from Suit Under the Civil Rights Act

Because of the recognized need by this Court to ensure uniformity in civil rights action and to reduce expensive litigation and uncertainty, it should be this Court who establishes any rule which exempts an entire class of state or municipal employees from liability under the Civil Rights Act.

There has been an ever increasing effort by the States to use this Court's decision in Fair Assessment as a basis to ban any action either in federal court or state court when such action

might have a tangential effect on the collection of taxes. See, e.g., Keleher v. New England Telephone & Telegraph Co., 947 F.2d 547 (2d Cir. 1991).

B. This Court Should Grant Review Because the Court of Appeal Has Created Complete Immunity From a Civil Rights Suit for the County of Riverside and Its Officials in All Tax Related Cases Which is Contrary to a Decided Case by This Court

In Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 166 (1993), Chief Justice Reinquist stated in a unanimous decision:

> "(U)nlike various government officials, municipalities do not enjoy immunity from suit--either absolute or qualified--under §1983. In short, a municipality can be sued under §1983, but it cannot be held liable unless a municipal policy or custom caused the constitutional injury."

The California Court of Appeal concluded in essence that this Court created a separate immunity in Fair Assessment and National Private Truck for the County and its Tax Collector merely because the constitutional injury occurred in connection with the tax process, i.e., the municipality and its tax collector cannot be sued under any circumstance because recovery by an aggrieved property owner may have a chilling effect on the collection process. This conclusion, if allowed to stand, will shield a municipality and its tax collector from any claim that arises under the Constitution merely because they are involved in the process of raising taxes.

C. Any Expansion of the Principles Established in *Fair Assessment* and *National Private Truck* Should Only Be Done by This Court Because of the Importance of Having National Uniformity in Civil Rights Actions

The need for national uniformity in civil rights actions was recognized by this Court in Wilson v. Garcia, supra, with respect to the issue of the applicable statute of limitations. Any expansion of the limited doctrine established in Fair Assessment, supra and National Private Truck, supra, should only be accomplished by this Court in order that there is national uniformity with respect to civil rights actions so that both uncertainty and time consuming litigation are eliminated.

D. The Expansion of the "Tax Injunction Act" and the Principle of Comity by the California Court of Appeal is Unwarranted and is Contrary to Decisions of This Court

The County of Riverside has received full payment of the property taxes, has not been sued for a repayment of the taxes, and Hillcrest Development's civil rights action was not a disguised effort on the part of Hillcrest Development to seek review of the constitutionality of a tax without payment. It is a suit resulting solely from the damages attributable to the deprivation of Hillcrest Development's property in violation of the Due Process Clause. The County of Riverside or the Tax Collector cannot avoid suit by asserting that because of the tangential effect on their taxing activity that the principle of comity and "Tax Injunction Act" precludes any relief.

In June of 1999, this Court in Jefferson County, Ala. v. Acker, 527 U.S. 423, 119 S.Ct. 2069, 2076 (1999) explained the meaning and purpose of "The Tax Injunction Act" ["Act"]. It stated, supra:

"By its terms, the Act bars anticipatory relief, suits to stop ('enjoin, suspend or restrain') the collection of taxes." [emphasis added]

This Court also stated that the conclusion of the Second Circuit in the 1991 case of Keleher v. New England Telephone & Telegraph, 947 F.2d 547, 551 as to the intent of Congress in passing the Act was wrong. Id. In Keleher, supra, the Court of Appeals stated that the "Tax Injunction Act" "creates an absolute jurisdictional bar to federal involvement in state and local revenue collection schemes, and that, as a result, a federal court may not play any role at all in the tax enforcement efforts of state or local governments." The conclusion reached in Keleher, supra, was in essence adopted by the California Court of Appeal as to a civil rights action in the state court. Though Hillcrest Development had no other way to recover its property or damages for the unlawful taking of its property, the California Court of Appeal reasoned that, since Hillcrest Development could file a refund, it had an "adequate remedy at law". It did not and could not explain how such refund, even if sought, would compensate Hillcrest Development for the injury resulting from the violation of its Due Process rights or how it was plain or complete. See, Carey v. Piphus, 435 U.S. 247, 259 (1978) ("the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question"). As to the Court of Appeal's conclusion (page A-22. Appendix) that Hillcrest Development did not claim that the tax refund scheme was inadequate, such conclusion is nonsensical. Hillcrest Development brought a civil rights action under federal law because California does not provide for relief. The adequacy of the tax refund scheme is simply irrelevant to a post collection case or a case not involving the collection of taxes.

Even where the action is one to enjoin, restrain, or suspend, neither the "Tax Injunction Act" nor the principle of comity preclude a taxpayer's action where the state court remedy is inadequate, i.e., the constitutional issues will not be given a full hearing (California v. Grace Brethren Church, 457 U.S. 393, 411-412 (1982)), where the damages are irreparable, or where there is a cloud on title. Dows v. City of Chicago, 78 U.S. 108, 110 (1870); National Private Truck Council v. Oklahoma Tax Commissioner, 515 U.S. 582, 591 (ftn. 6) (1995). The damages are irreparable and there is a cloud on title.

The issue is not whether a state statute is constitutionally valid but rather whether the municipality and its official's conduct violated established constitutional standards. This is precisely the purpose of section 1983 suits. See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The appropriate remedy for deprivation of a liberty and/or property interest without Due Process is to order the process that was due and any attendant damages which directly result from the failure to give the proper notice. Carey v. Piphus, supra.

E. Review is Necessary Because the California Court of Appeal has Extended the Principle of Comity and Anti-Injunction Act Even to the Non-Governmental Defendants

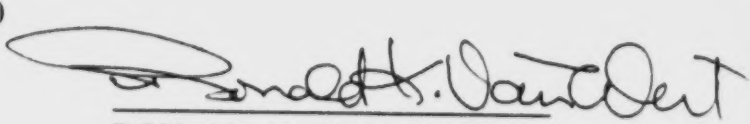
Private parties acting under color of state law are not entitled to the qualified immunity defense. Crawford-El v. Britton, 523 U.S. 574, 590 (ftn. 13 (1998)); F.E. Trotter, Inc v. Watkins, 869 F.2d 1312, 1318-1319 (9th Cir. 1989). They are subject to a civil rights action when they participate in a state action which results in the deprivation of the property of another. Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 942 (1982).

The right to sue a purchaser in order to quiet title as a result of the failure of the government to give notice or improper notice was recognized in Mennonite, supra.

5. CONCLUSION

Review is appropriate because of the necessity of resolving important questions of law, because of the effect of the Court of Appeal Opinion on the Tax Collector of a major County in California, which established that his actions in providing constitutionally mandated notice are not subject to judicial review under the Civil Rights Act, and because of the need to secure uniformity of decisions in civil rights actions.

Dated: April 14, 2000



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HILLCREST DEVELOPMENT

APPENDIX

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Court of Appeal Fourth District

COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

HILLCREST DEVELOPMENT, Plaintiff and Appellant, v. COUNTY OF RIVERSIDE et al., Defendants and Respondents.	E023512 (Super.Ct.No. 303035) **OPINION**

APPEAL from the Superior Court of Riverside County. Richard G. Van Frank, Judge. Affirmed.

Ronald K. Van Wert for Plaintiff and Appellant.

William C. Katzenstein, County Counsel, and Dorothy L. Honn, Deputy County Counsel, for Defendants and

Respondent County of Riverside and R. Wayne Watts, Treasurer-Tax Collector of the County of Riverside.

Reid & Hellyer, James J. Manning, Jr., and Michael G. Kerbs for Defendants and Respondents N.R.L.L., Inc., and SPAN, L.L.C.

Plaintiff Hillcrest Development (Hillcrest) owned land worth over $1 million. However, it failed to pay property taxes on the land for at least six years in a row. As a result, the land was sold for taxes; the purchaser paid only $162,000 for it.

About three years before the sale, Hillcrest moved. It did not notify the tax collector of its change of address. When it came time to send notice of the sale, the tax collector tried to find Hillcrest's current address through Riverside County and Department of Motor Vehicle (DMV) records, as well as Riverside and Orange County telephone directories, but was unable to do so. The tax collector therefore sent notice of the sale to three of Hillcrest's former addresses. Hillcrest never received actual notice. Even though Hillcrest's former addresses were all in Orange County, the tax collector failed to check Orange County fictitious business name filings; doing so would have revealed Hillcrest's current address. The tax collector also failed to make inquiries regarding Hillcrest's general partner, even though his name was listed on numerous documents concerning Hillcrest.

Hillcrest filed this action to set aside the tax sale. The trial court granted summary judgment against Hillcrest on the ground that the applicable statute of limitations was Revenue and Taxation Code section 3725, which had run. In this appeal, Hillcrest argues (1) defendants were estopped to assert the statute of limitations, and (2) Hillcrest's complaint asserted federal civil rights causes of action (42 U.S.C. § 1983), and therefore the applicable statute of limitations was Code of Civil Procedure section 340, subdivision (3), which had not run.

To the extent that Hillcrest's complaint arises under state law, the trial court was correct. Revenue and Taxation Code section 3725 was the applicable statute of limitations; it had run; and Hillcrest failed to raise a triable issue of fact regarding estoppel.

To the extent that Hillcrest's complaint arises under 42 United States Code section 1983 (section 1983), the trial court erred. Code of Civil Procedure section 340, subdivision (3), was the applicable statute of limitations. There was at least a triable issue of fact with respect to whether it had run. The error, however, was harmless. Defendants were entitled to summary judgment in any event because section 1983 does not afford a remedy for allegedly unconstitutional state taxation.

I
FACTUAL BACKGROUND

The following facts are taken from the papers filed in support of and in opposition to defendants' motion for summary adjudication. Consistent with the applicable standard of review, we view the evidence in the light most favorable to the party opposing the motion — in this case, to Hillcrest. *(Abou-Jaoude v. British Airways* (1991) 228 Cal.App.3d 1137, 1139.)

Hillcrest is a limited partnership. Paul T. Salata is Hillcrest's general partner.

In 1984, Hillcrest acquired certain real property in Lake Elsinore. It paid taxes on the property only once, in 1988.

In 1984, when Hillcrest purchased the property, Hillcrest's address was 213 La Jolla Drive, Newport Beach. This address was listed on the deed. The deed also stated that, after recording, it was to be sent to Ronald K. Van Wert at 3151 Airway Avenue, Suite A-1, Costa Mesa.

Later in 1984, Hillcrest filed a certificate of limited partnership listing its La Jolla Drive address; again, acknowledgment was to be sent to Van Wert at his Airway Drive address.

In 1988, Hillcrest filed an amendment to its certificate of limited partnership. The amendment listed Hillcrest's address as 15707 Rockfield Boulevard, #215, Irvine; it listed Salata as its general partner, at the Rockfield Boulevard address; and it indicated acknowledgment was to be sent to Van Wert, at 1301 Dove Street, 10th Floor, Newport Beach. Also in 1988, Hillcrest recorded a deed affecting the property; the deed gave the Rockfield Boulevard address.

In 1989, Salata notified the tax collector that Hillcrest's address had changed to 3100 Airway Avenue, # 124, in Costa Mesa. This became its address of record on the tax roll.

Some time in 1993, Hillcrest moved to 3723 Birch Street, #11, Newport Beach. It did not notify the tax collector of this change of address. However, it did file a change of address with the post office. It also filed a fictitious business name statement listing this address and listing Salata as general partner, with his home address. The fictitious business name statement was, as required, filed in Orange County, where Hillcrest's principal place of business was located. (See Bus. & Prof. Code, § 17915.)

On February 8, 1996, the tax collector sent "Notices of Sale" (Rev. & Tax. Code, § 3701) to Hillcrest, by certified mail, addressed to each of its pre-1993 addresses: La Jolla Drive, Rockfield Boulevard, and Airway Avenue. They were all returned as undeliverable.

Before sending the notices, the tax collector tried, without success, to find Hillcrest's address using Riverside County and DMV records and the Riverside and Orange County telephone directories. It could have found Hillcrest, however,

by checking the Orange County fictitious business name filings. It could have found Salata through DMV records and the Orange County telephone directory. It could have found Van Wert at his Dove Street address, which was listed in Hillcrest's amended certificate of limited partnership, and through the Orange County telephone directory.

On March 26, 1996, the tax collector sold the property at auction to N.R.L.L., Inc. (NRLL). NRLL paid $162,000 for it; it was worth over $1 million. On April 24, 1996, the tax deeds to NRLL were recorded. NRLL later conveyed the property to SPAN, L.L.C. (SPAN). Hillcrest continued to pay for utilities for the property.

On July 19, 1996, Nelson-Brown Equities, Inc. (Nelson-Brown), an asset search company, notified Hillcrest that it appeared to be entitled to unclaimed assets worth approximately $83,000. Nelson-Brown would not disclose the nature or source of the assets unless Hillcrest entered into a fee agreement.

Salata discussed the matter with Van Wert, who was Hillcrest's attorney. Based on his own knowledge of Hillcrest's development activities, Salata believed one possible source of unclaimed funds was Riverside County (County). At Salata's request, Van Wert contacted the County and asked if it owed Hillcrest any money. County representatives responded that it did not owe Hillcrest any money.

Because Hillcrest was unable to identify the source of the funds on its own, it entered into a fee agreement with Nelson-Brown. In a letter dated October 15, 1996) Nelson-Brown disclosed to Hillcrest that: "The holder of the unclaimed funds is the County of Riverside. The form is in excess proceeds from the sale of [assessor's parcel numbers of the property]."

On November 7, 1996, Salata signed documents authorizing Nelson-Brown to act as Hillcrest's agent in

submitting a claim for the excess proceeds. These documents stated: "I, the undersigned, do hereby make Nelson-Brown Equities, Inc. my agent to apply for and collect the excess proceeds which you are holding and to which I am entitled from the sale of assessment number [assessor's parcel numbers of the property] sold at public auction. . . ." On December 18, 1996 (as to one parcel), and March 12, 1997 (as to the other), Nelson-Brown submitted Hillcrest's excess proceeds claim to the tax collector. (See Rev. & Tax. Code, § 4675.)

In September 1997, Salata saw a "for sale" sign on the property. He called the phone number listed on the sign and was told the property had been sold for taxes.

On October 14, 1997, Hillcrest filed this action.

On November 18, 1997, the County paid Hillcrest's excess proceeds claim.

II.
PROCEDURAL BACKGROUND

Hillcrest filed this action against the County, the tax collector, NRLL and SPAN.[1] Hillcrest alleged three causes of action: (1) to quiet title and to cancel the tax deed, against all defendants, (2) for civil rights violations (42 U.S.C. § 1983), against the County and the tax collector, and (3) for declaratory relief, against all defendants.

Defendants filed answers asserting various affirmative defenses, including that the action was barred by Revenue and Taxation Code section 3725.

On a date not reflected in the record, NRLL and SPAN filed a cross-complaint. On March 6, 1998, they filed a first amended cross-complaint against Hillcrest and Salata.

On May 28, 1998, the County and the tax collector filed a motion for summary judgment. Subsequently, NRLL and

SPAN were deemed to have joined in the motion. Defendants argued (1) the action was barred by Revenue and Taxation Code section 3725, and (2) the tax collector had complied with all statutory notice requirements.

On August 4, 1998, the trial court granted the motion on the ground that the action was barred by Revenue and Taxation Code section 3725 and dismissed the complaint.

On September 10, 1998, Hillcrest filed a timely notice of appeal.

On October 13, 1998, NRLL and SPAN dismissed their cross-complaint without prejudice.[2]

III
APPEALABILITY

We perceive a preliminary issue regarding appealability.

The judgment finally resolved all issues as between Hillcrest on the one hand and the County and the tax collector on the other hand. To that extent, it is clearly appealable. *(Hydrotech Systems, Ltd v. Oasis Waterpark* (1991) 52 Cal.3d 988, 993, fn. 3; *Justus v. Atchison* (1977) 19 Cal.3d 564, 568, disapproved on other grounds in *Ochoa v. Superior Court* (1985) 39 Cal.3d 159, 171; *Buckaloo v. Johnson* (1975) 14 Cal.3 d 815, 821, fn. 3, disapproved on other grounds in *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 393, fn. 5.)

What is unclear is whether NRLL and SPAN are proper parties to the appeal. When Hillcrest filed its notice of appeal, their cross-complaint was still pending. Accordingly, as to them, the judgment was not final. *(American Alternative Energy Partners II v. Windridge, Inc.* (1996) 42 Cal.App.4th 551, 557; *G.E. Hetrick & Associates, Inc. v. Summit Construction &*

Maintenance Co. (1992) 11 Cal.App.4th 318, 325; *Holt v. Booth* (1991) 1 Cal.App.4th 1074, 1081.)

Later, NRLL and SPAN dismissed their cross-complaint without prejudice. Even assuming a subsequent dismissal can legitimate a previously filed appeal under other circumstances (but see Cal. Rules of Court, rule 2(c)), we question whether a dismissal without prejudice can do so. (See *Tudor Ranches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1429; *Hill v. City of Clovis* (1998) 63 Cal.App.4th 434, 442-445; cf *Roy Brothers Drilling Co. v. Jones* (1981) 123 Cal.App.3d 175, 180.)

Nevertheless, the issues on which we ultimately resolve this appeal are essentially identical with respect to all defendants. Resolving them solely with respect to the County and the tax collector, while dismissing the appeal with respect to NRLL and SPAN, "would result in the fragmentation and multiplicity of appeals which the one final judgment rule seeks to avoid." *(G.E. Hetrick & Associates, Inc. v. Summit Construction & Maintenance Co., supra*, 11 Cal.App.4th at p. 326, fn. 5.) Under these circumstances, we may decide the issues with respect to all parties. (*Id.*, at pp. 325-326 and 326, fn. 5; see also *Homestead Savings v. Darmiento* (1991) 23 0 Cal.App. 3d 424, 430, fn. 5.)

IV
CAUSES OF ACTION TO INVALIDATE THE TAX SALE

A. *The Applicable Statute of Limitations.*

Chapter 7 of the Revenue and Tax Code (Rev. & Tax. Code, §§ 3691-3731.1) prescribes the procedures for the sale of tax-defaulted property to private parties. Tax defaulted property cannot be sold until it has remained in default for at least five

years. (Rev. & Tax. Code, § 3691, subd. (a)(1); see also Rev. & Tax. Code, § 3361.) Throughout these five years, and up until the property is sold, the owner has the right to redeem it by paying the delinquent taxes, plus interest, costs and fees. (Rev. & Tax. Code, §§ 3707, subds. (a), (d), 4101, 4102, 4103.)

Revenue and Taxation Code section 3701 requires the tax collector to "send notice of the proposed sale by certified mail with return receipt requested to the last known mailing address, if available, of parties of interest. . . ."[3] It further requires the tax collector to "make a reasonable effort to obtain the name and last known mailing address of parties of interest." Revenue and Taxation Code section 3725, however, provides: "A proceeding based on alleged invalidity or irregularity of any proceedings instituted under this chapter can only be commenced within one year after the date of execution of the tax collector's deed."

Hillcrest's first cause of action was to quiet title. "The law is clear that the theory of relief underlying an action for quiet title ... determines which statute of limitations applies. [Citations.]" *(Ankoanda v. Walker-Smith* (1996) 44 Cal.App.4th 610, 615, and cases cited.) To the extent that Hillcrest's right to quiet title turned on the invalidity or irregularity of the tax sale, the applicable statute of limitations was Revenue and Taxation Code section 3725.

Hillcrest's third cause of action was for declaratory relief. A declaratory relief cause of action is governed by the statute of limitations applicable to the analogous cause of action for coercive relief. (*Lerner v. Los Angeles City Board of Education* (1963) 59 Cal.2d 382, 389; *Engstrom v. Kallins* (1996) 49 Cal.App.4th 773, 784.) Thus, once again, to the extent the declaratory relief cause of action was based on the invalidity or irregularity of the tax sale, it, too, was subject to Revenue and Taxation Code section 3725.

B. *Estoppel to Assert the Statute of Limitations.*

Revenue and Taxation Code section 3725 had run before Hillcrest brought suit. Indeed, Hillcrest does not argue otherwise. It does contend, however, there was a triable issue of fact with respect to whether defendants were estopped from invoking the statute of limitations. As a basis for estoppel, Hillcrest relies on the alleged fact that the tax collector failed to give it due notice, together with the fact that, when it asked the County if it was owed any money, the County said no. The County and the tax collector fail to respond to this contention. (NRLL and SPAN merely respond that any estoppel runs against the County, not against them.) We do not take this as a concession that it has merit, however, because it does not.

It seems clear that failure to give notice of a tax sale does not give rise to an estoppel. *(Union Paving Co. v. East Del Paso Heights* (1963) 217 Cal.App.2d 772, 776777; see also *Howard v. State of California* (1963) 216 Cal.App.2d 281, 284-286.) "If an estoppel could be raised when the assertion is made that notice was not given, then the question could be presented in nearly every case where an irregularity occurred." *(Union Paving Co. v. East Del Paso Heights, supra,* at p. 777.) Numerous cases have held a challenge to a tax sale based on lack of notice may be barred by the statute of limitations. *(E.g., Kaufman v. Gross & Co.* (1979) 23 Cal.3d 750, 757-760; *Elbert, Ltd. v. Gross* (1953) 41 Cal.2d 322, 328-332; *Tannhauser v. Adams* (1947) 31 Cal.2d 169, 173-177; *Howard v. State of California, supra,* 216 Cal.App.2d at pp. 284-286.) While these cases did not address estoppel in so many words, they necessarily imply that estoppel is not available based on lack of notice. *(Union Paving Co. v. East Del Paso Heights, supra, at* p. 777.)

This appears to be a particular application of the more general principle that "estoppel will not be applied against the government if to do so would nullify a strong rule of policy adopted for the benefit of the public. [Citations.]" *(Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 994-995.) In tax deed cases, the statute of limitations serves the important public purposes of ensuring stability of title and protecting finality in tax proceedings. (See *Sears v. County of Calaveras* (1955) 45 Cal.2d 518, 521-522; *Howard v. State of California, supra,* 216 Cal.App.2d at pp. 285-286.) Any resulting unfairness to the plaintiff is insufficient to outweigh these public purposes. "There is ... the unquestioned tax debt to justify the taking, and, in addition, the taxpayer is permitted at least six years within which to redeem or attack any supposed irregularity in the tax proceedings. Such period is a most reasonable allowance for the cure of the laxity of tax delinquency." *(Howard v. State of California, supra,* at p. 286.) For these reasons, we conclude that neither the County's failure to give notice nor its affirmative misrepresentation that it did not owe Hillcrest any money will estop it from invoking the statute of limitations.

Alternatively, even assuming the County could be estopped, we do not believe Hillcrest has raised a triable issue of fact with respect to estoppel. Estoppel is sometimes likened to equitable tolling. It differs, however, in that it does not literally toll the limitations period. That is, the time during which an estoppel is in effect is not simply subtracted from the total limitations period. The ultimate issue is whether the plaintiff failed to file within the limitations period due to reliance on the defendant's conduct. Accordingly, "[i]f there is still ample time to institute the action within the statutory period after the circumstances inducing delay have ceased to operate, the plaintiff who failed to do so cannot claim an estoppel. [Citations.]" *(Lobrovich v. Georgison (1956)* 144 Cal.App.2d

567, 573-574.) "[W]hen a substantial period for instituting proceedings supervened after expiration of the delay engendered by a party ... his conduct or representations will not estop him from asserting the bar of the statue . . . ." *(Industrial Indem. Co. v. Ind. Acc. Com.* (1953) 115 Cal.App.2d 684, 690; accord, *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 446, and cases cited; *Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 716.)

In the *Santee* case, for example, the plaintiffs failed to present a timely governmental tort claim; they did present a timely late-claim application, but to the wrong public entity. That entity purported to grant the late-claim application and to deny the claim. *(Santee v. Santa Clara County Office of Education, supra,* 220 Cal.App.3d at p. 709.) On appeal, the plaintiffs argued this excused their failure to present a timely late-claim application to the correct public entity. The appellate court treated this as an estoppel argument. It held that, when the plaintiffs learned of their mistake, "[they] still had two months in which to submit a late-claim application to [the defendant] before the one-year jurisdictional limit expired. Their failure to do so precludes reliance on an estoppel." (*Id.*, at p. 716.)

Assuming, without deciding, a jury could find Hillcrest initially failed to file suit in reliance on defendants' conduct, any such reliance had clearly ended long before the end of the limitations period. On October 15, 1996, Nelson-Brown advised Hillcrest that the County was holding $83,000 in excess proceeds from the sale of its property. Moreover, on November 7, 1996, Salata signed documents authorizing Nelson-Brown to claim the excess proceeds from the sale of the property at public auction. Even at the latter point Hillcrest still had five-and-a-half months in which it could have filed a timely suit. It cannot claim it was still relying on any conduct of defendants.

Hillcrest, attempting to raise a triable issue of fact, submits Salata's testimony that: "I had no understanding of the meaning of 'excess proceeds', and I was told and understood that there may not be any moneys due Hillcrest. If there was, I did not believe that it had anything to do with the tax sale of the [p]roperty because when I discovered the 'for sale' sign in September of 199[7], we immediately found out about the tax sale . . . ." Even accepting Salata's claim that he "did not believe [the money] had anything to do with the tax sale," he never plainly testifies he did not know there had *been* a tax sale. But more important he never claims *Hillcrest* did not know there had been a tax sale. When Salata appointed Nelson-Brown as Hillcrest's agent, Hillcrest was deemed to know what Nelson-Brown knew. Thus, from that point on, Hillcrest was chargeable with knowledge of the tax sale. (Civ. Code, § 2332; *Chaplis v. County of Monterey* (1979) 97 Cal.App.3d 249, 262 [agents' knowledge, imputed to principal, defeats estoppel].)

C. *Exception for an Owner in Possession.*

Hillcrest also argues Revenue and Taxation Code section 3725 does not apply where the asserted procedural defect is jurisdictional and the original owner remained in possession of the property.

"The contention that a statute limiting the time for the commencement of an action to set aside a deed to the state for delinquent taxes does not apply to an owner in exclusive and undisputed possession of the property taxed, is largely based on a rule stated to be that a general statute of limitations does not run against such an owner to remove a cloud upon his title." *(Sears v. County of Calaveras, supra,* 45 Cal.2d at p. 521.) In delinquent tax cases, this rule has been more honored in the

breach than in the observance. Indeed, we have been unable to find a single case in which an owner actually benefited from it.

The owner in possession rule applies only "to owners who because of their possession could not be assumed to have actual knowledge of claims of adverse interest by persons not in possession." *(McCaslin v. Hamblen* (1951) 37 Cal.2d 196, 199.) When an owner owes delinquent taxes, however, "the very fact of his delinquency operates to charge him 'with notice that if he claims the invalidity of a tax deed to the state or of the proceedings leading up to it he must bring his action for that purpose within the statutory time.' [Citation.]" *(Kaufinan v. Gross & Co., supra,* 23 Cal.3d at p. 756, quoting *Sears v. County of Calaveras, supra,* 45 Cal.2d at p. 522.) "There appears to be no reason why an owner of land, although in exclusive and undisputed possession, should not be required to be alert to protect his rights as against his own delinquency in the payment of taxes." *(Sears v. County of Calaveras, supra,* at pp. 521-522; accord, *Edwards v. City of Santa Paula* (1956) 138 Cal.App.2d 375, 378-379.)

Salata testified that, on occasion, portions of Hillcrest's land were sold and delinquent taxes were paid out of escrow. He also testified, or at least implied, that he was unaware there were any delinquent taxes not paid in this way. Once again, however, Salata never testified that Hillcrest, as an entity, was unaware that any taxes were due. In any event, we do not believe the applicability of the owner in possession rule turns on whether the owner has actual knowledge of the delinquency. Rather, an owner is deemed to have constructive knowledge. An owner either knows or *should know* whether property taxes have been paid (at least in the absence of unusual circumstances not present here).

Hillcrest had not paid property taxes for six years. Despite Salata's claim of ignorance, Hillcrest was chargeable

with knowledge of the delinquency. Thus, even though it was in undisturbed possession, it knew or had reason to know that its property could be sold for taxes. Hillcrest therefore cannot claim the benefit of an "owner in possession" exception to Revenue and Taxation Code section 3725.

We conclude the trial court correctly granted summary judgment on both Hillcrest's cause of action to quiet title and its cause of action for declaratory relief, to the extent they were based on the invalidity or irregularity of the tax sale, on the ground that they were barred by the statute of limitations.

V
SECTION 1983 CAUSES OF ACTION

A. *The Applicable Statute of Limitations.*

Hillcrest's second cause of action was for a deprivation of civil rights under section 1983. Moreover, Hillcrest's first cause of action, to quiet title, and its third cause of action, for declaratory relief, both alleged, and were at least partially based on, the same alleged deprivation of civil rights. To this extent, all three causes of action were subject to the statute of limitations applicable to a federal civil rights action.

In Wilson v. Garcia (1985) 471 U.S. 261 [105 S.Ct. 1938, 85 L.Ed.2d 254], the Supreme Court held that a section 1983 action is governed by the state statute of limitations for a "tort action for the recovery of damages for personal injuries . . . ." (*Id.*, at p. 276.) In California, this is Code of Civil Procedure section 340, subdivision (3), which provides a one-year limitations period. *(City of Huntington Park v. Superior Court* (1995) 34 Cal.App.4th 1293, 1297; *Ponderosa Homes, Inc. v. City of San Ramon* (1994) 23 Cal.App. 4th 1761, 1772; *Jackson v. Cedars-Sinai Medical Center* (1990) 220 Cal.App.3d

1315, 1323-1324; *Newton v. County of Napa* (1990) 217 Cal.App.3d 1551, 1563-1564.)

NRLL and SPAN characterize *Wilson* as holding that a section 1983 cause of action is governed by the most analogous state statute of limitations; they argue that here, Revenue and Taxation Code section 3725 is most analogous. This grossly misrepresents *Wilson*. *Wilson* recognized a section 1983 cause of action "can have no precise counterpart in state law.... [A]ny analogies to [state law] causes of action are bound to be imperfect." *(Wilson v. Garcia, supra,* 471 U.S. at p. 272, fn. omitted.) It emphasized the need for uniformity and predictability: "[A] simple, broad characterization of all § 1983 claims best fits the statute's remedial purpose. The experience of the courts that have predicated their choice of the correct statute of limitations on an analysis of the particular facts of each claim demonstrates that their approach inevitably breeds uncertainty and time-consuming litigation that is foreign to the central purposes of § 1983." *(Id.,* at p. 272, fn. omitted.) It described section 1983 as "a directive to select in each State, the one most appropriate statute of limitations for all § 1983 claims. The federal interests in uniformity, certainty, and the minimization of unnecessary litigation all support the conclusion that Congress favored this simple approach." (*Id.*, at p. 275.) Accordingly, *Wilson* did not hold the "most analogous" state statute of limitations applies; it specifically held the state personal injury statute of limitations applies. (*Id.*, at pp. 276-279.)

Although Code of Civil Procedure section 340, subdivision (3), like Revenue and Taxation Code section 3725, prescribes a one-year limitations period, it affords a more generous accrual rule. "[F]ederal law governs when a cause of action accrues and the statute of limitations begins to run in a § 1983 action. [Citation.] Under federal law, the claim generally

accrues when the plaintiff 'knows or has reason to know of the injury which is the basis of the action.' [Citation.]" *(Cabrera v. City of Huntington Park* (9th Cir. 1998) 159 F.3d 374, 379-380, quoting *Elliott v. City of Union City* (9th Cir. 1994) 25 F.3d 800, 802.)

Here, there was a triable issue of fact with respect to when Hillcrest knew or should have known its property had been sold for taxes. A reasonable jury could find it had no reason to know this until it received Nelson-Brown's letter, dated October 15, 1996, advising it that it was entitled to excess proceeds from the County's sale of the property. A reasonable jury could even find it had no reason to know this until November 7, 1996, when Salata signed the forms making Nelson-Brown Hillcrest's agent for the purpose of claiming the excess proceeds. This action was filed on October 14, 1997 — less than a year from both of these dates. Thus, there was at least a triable issue of fact with respect to whether Hillcrest's causes of action, to the extent they were based on section 1983, were timely filed.

B. *The Availability of a Section 1983 Cause of Action to Challenge State Taxation.*

The County and the tax collector contend, however, that section 1983 does not afford a remedy in state tax cases. As a preliminary procedural matter, we note that they never raised this contention in their motion for summary judgment. Nevertheless, we have discretion to reach a pure question of law for the first time on appeal *(Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal. 4th 1, 24; *In re Marriage of Peters* (1997) 52 Cal.App. 4th 1487, 1490) — even on appeal from a summary judgment. *(Cislaw v. Southland Corp.* (1992) 4 Cal.App. 4th

1284, 1297.) This contention presents such a pure question of law.

Hillcrest does not object to our reaching this contention. To the contrary, after mentioning that it was not raised below, Hillcrest proceeds to respond to it on the merits. Hillcrest does not claim that, if this contention had been made below, it could have introduced additional evidence which would have raised a triable issue of fact on this issue. (Cf. *Juge v. County of Sacramento* (1993) 12 Cal.App.4th 59, 70-71.) Thus, we believe Hillcrest has waived any objection to our considering it.

The contention finds its source in two United States Supreme Court cases. In the first of these, *Fair Assessment in Real Estate Assn. v. McNary* (1981) 454 U. S. 100 [102 S.Ct. 177, 70 L.Ed.2d 271], the plaintiffs filed a section 1983 action, alleging certain local real property reassessment practices violated equal protection and due process. Individual plaintiffs sought a refund and punitive damages; an organizational plaintiff sought an award of the expenses it had incurred in seeking more equitable assessments. (*Id.*, at pp. 105-106.)

The Supreme Court held "taxpayers are barred by the principle of comity from asserting § 1983 actions against the validity of state tax systems in federal courts. Such taxpayers must seek protection of their federal rights by state remedies, provided of course that those remedies are plain, adequate, and complete, and may ultimately seek review of the state decisions in this Court. [Citations.]" *(Fair Assessment in Real Estate Assn. v. McNary, supra,* 454 U.S. at p. 116, fn. omitted.)

The court began by noting that under the Tax Injunction Act federal courts are barred from enjoining the collection of a state tax, at least where there is "a plain, speedy and efficient remedy" in state court. *(Fair Assessment in Real Estate Assn. v. McNary, supra,* 454 U.S. at p. 103, quoting 28 U.S. C. § 1341.) The Tax Injunction Act, it indicated, merely reflects broader

principles of comity. *(Fair Assessment, supra,* at p. 103.) As it also noted, it had previously held, based on comity, that federal courts "may not even render declaratory judgments as to the constitutionality of state tax laws." *(Ibid.;* see also *id.,* at pp. 110-111.)

The court concluded comity also barred an action for damages based on the unconstitutionality of a state tax, for two reasons. *(Fair Assessment in Real Estate Assn. v. McNary, supra,* 454 U.S. at pp. 113-115.) First, "[t]he recovery of damages under the Civil Rights Act first requires a 'declaration' or determination of the unconstitutionality of a state tax scheme that would halt its operation." (*Id.*, at p. 115.) "In effect the district court must first enter a declaratory judgment .... We are convinced that such a determination would be fully as 'intrusive as the equitable actions that are barred by principles of comity." (*Id.*, at p. 113, fn. omitted.) Second, " . . . damages actions, no less than actions for an injunction, would hale state officers into federal court every time a taxpayer alleged the requisite elements of a § 1983 claim." (*Id.*, at p. 115.) "[S]uch officials, faced with the prospect of personal liability to numerous taxpayers, not to mention the assessment of attorney's fees under 42 U.S.C. § 1988, would promptly cease the conduct found to have infringed petitioners' constitutional rights, whether or not those officials were acting in good faith. In short, petitioner's action would 'in every practical sense operate to suspend collection of the state taxes . . . '" (*Id.*, at p. 115, quoting *Great Lakes Dredge & Dock Co. v. Huffman* (1943) 319 U.S. 293, 299 [63 S.Ct. 1070, 87 L.Ed. 1407].)

Next, in *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n* (1995) 515 U.S. 582 [115 S.Ct. 2351, 132 L.Ed.2d 509], the plaintiffs claimed a state tax on motor carriers violated both the commerce clause and the privileges and immunities clause. They filed suit in state court, under both

state law and section 1983. *(National Private Truck Council, supra,* at p. 584.) The state courts held the tax unconstitutional, and awarded refunds; however, they refused to award any relief under section 1983. *(Id.,* at p. 585.)

The Supreme Court affirmed. It held: § 1983 does not call for either federal or state courts to award injunctive and declaratory relief in state tax cases when an adequate legal remedy exists." *(National Private Truck Council, Inc., v. Oklahoma Tax Comm'n, supra,* 515 U.S. at p. 589.) It explained: "Just as *Fair Assessment* relied upon a background principle in interpreting § 1983 to preclude damages actions in tax cases brought in federal court, so we rely on the same principle in interpreting § 1983 to provide no basis for courts to award injunctive relief when an adequate legal remedy exists. Our interpretation is supported not only by the background principle of federal noninterference discussed in *Fair Assessment,* but also by the principles of equitable restraint discussed at length in that case. [Citation.] Whether a suit is brought in federal or state court, Congress simply did not authorize the disruption of state tax administration in this way." (*Id.,* at p. 590.)

The only question *Fair Assessment and National Private Truck* did not address directly was whether a section 1983 action challenging a state tax could be brought in state court, for damages. In California, this question was recently resolved in *General Motors Corp. v. City and County of San Francisco* (1999) 69 Cal.App.4th 448. There, General Motors claimed a municipal business tax violated the commerce clause by discriminating in favor of local manufacturers. It sued for a refund under both state law and section 1983. *(General Motors Corp., supra,* at p. 451.) On appeal, the court held the tax was indeed unconstitutional (*id.,* at pp. 452-454), and therefore, General Motors was entitled to a refund. (*Id.,* at pp. 454-456.) It also held, however: "A citizen, like General Motors, may not

maintain a section 1983 action challenging municipal taxation when an adequate state remedy exists." (*Id.*, at p. 460.) After discussing *Fair Assessment and National Private Truck,* it stated: "The conclusion drawn when these two cases are jointly considered is inescapable: section 1983 actions challenging state taxation are barred, whether the actions seek damages or equitable relief, and whether brought in federal or state court, provided an adequate state remedy exists." *(General Motors Corp., supra,* at p. 460.) It concluded General Motors was not entitled to attorney's fees under section 1983. *(General Motors Corp., supra,* at pp. 456-461.)

"Other state courts have likewise barred section 1983 damages claims challenging local taxes where an adequate state remedy exists. (Citations.]" *(General Motors Corp. v. City and County of San Francisco, supra,* 69 Cal.App.4th at p. 460, and cases cited; see also *Kerr v. Waddell* (1996) 185 Ariz. 457, 463-464 [916 P.2d 1173]; *State v. Golden's Concrete Co.* (Colo. 1998) 962 P. 2d 919, 925; *New England Legal Foundation v. City of Boston* (1996) 423 Mass. 602, 614 [670 N.E.2d 152].)

Hillcrest's only response is that it is not seeking to enjoin or prevent the collection of any tax. *Fair Assessment,* however, held the comity principle applies to section 1983 actions for damages. Here, if Hillcrest could invalidate the tax sale, the County would have to refund the sale price to NRLL and/or SPAN. The sale price, however, minus the excess proceeds which the County has already refunded to Hillcrest,[4] represent the taxes due. In essence, then, Hillcrest is seeking a refund, just like the plaintiffs in *Fair Assessment and General Motors.*

Hillcrest is not merely challenging a single isolated instance of alleged failure to give notice. In order to prevail on its section 1983 claim, Hillcrest would have to prove the tax collector had an official policy or custom of failure to give notice. *(Sinclair & Valentine Co. v. County of Los Angeles*

(1988) 201 Cal.App.3d 1021, 1027-1028; see generally *Monell v. New York City Dept. of Social Services* (1978) 436 U.S. 658 [98 S. Ct. 2018, 56 L.Ed.2d 611].) Thus, Hillcrest is effectively seeking a declaration regarding the constitutionality of a state tax scheme. Moreover, such a declaration would have the same potential for a chilling effect on state tax administration that was a motivating concern in *Fair Assessment.* Hillcrest's section 1983 cause of action therefore presents all the vices that led the court in *Fair Assessment* to bar actions for damages.

Hillcrest does not argue it had no adequate legal remedy under state law. We believe an action for a refund under state law is precisely such an adequate remedy. Hillcrest's own failure to bring a refund action before the statute of limitations supervened does not render that remedy inadequate. *(Burris v. City of Little Rock* (8th Cir. 1991) 941 F. 2d 717, 721, fn. 4; *Aluminum Company of America v. Department of the Treasury of the State of Michigan* (6th Cir. 1975) 522 F.2d 1120, 1123-1125; *Henry v. Metropolitan Dade County* (5th Cir. 1964) 329 F.2d 780, 781; see also *Fair Assessment in Real Estate Assn. v. McNary, supra,* 454 U.S. at p. 116, fn. 8 ["no significant difference" between adequacy of state remedy for purposes of comity and adequacy of state remedy for purposes of Tax Injunction Act].) This is not a case in which the taxpayer, due to lack of notice, had no way of bringing a refund action before the expiration of the limitations period. Hillcrest had notice of the tax sale more than five months before the end of the limitations period. Thus, we need not consider whether in such a case a state refund action would be an adequate remedy.

We conclude Hillcrest could not state a claim under section 1983. Accordingly, the trial court properly granted summary judgment on all of Hillcrest's causes of action to the extent that they were based on an alleged deprivation of civil rights.

VI
DISPOSITION

The judgment is affirmed. Defendants shall recover costs against Hillcrest.

NOT TO BE PUBLISHED

/s/ Richii

We concur:

/s/ McKinster
Acting P. J.

/s/ Ward
J.

FILED
AUG 04 1998

Superior/Municipal Court
of Riverside County

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Treasurer-Tax Collector, R. Wayne Watts

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

HILLCREST DEVELOPMENT, a California Limited Partnership,	) Case No. 303035
Plaintiff,	) ORDER GRANTING) MOTION FOR) SUMMARY) JUDGMENT AND) JUDGMENT OF) DISMISSAL
v.	
COUNTY OF RIVERSIDE, a Public Entity; R. WAYNE WATTS, Treasurer-Tax	)

Collector of the County of Riverside; N.R.L.L., INC., a California Corporation; SPAN, L.L.C., a Limited Liability Company; and all persons claiming by, through or under such person, and all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to plaintiff's title, or any cloud on plaintiff's title thereto, named as DOES 1-20, inclusive,

Defendants.

N.R.L.L., INC. a California corporation,

Cross-Complainant,

v.

HILLCREST DEVELOPMENT, a California Limited Partnership; PAUL SALATA, general partner of HILLCREST DEVELOPMENT; all persons unknown claiming any legal or equitable right, title, estate, lien, or interest in the real property

described in the cross-complaint)
adverse to cross-complainant's)
ownership or any cloud on cross-)
complainant's title thereto; and,)
DOES 1 through 200, inclusive,)
)
Cross-Defendants.)
)

The motion of Defendants, County of Riverside and R. Wayne Watts, Tax Collector, for summary judgment, and the joinder in such motion of Defendants N.R.L.L. and Span, LLC, came on regularly for hearing before this Court in Department 8, the Honorable Richard G. Van Frank, Judge Presiding. Ronald K. Van Wert appeared as attorney for Plaintiff, Hillcrest Development; James J. Manning, Jr. appeared as attorney for Defendants and Cross-Complainants, N.R.L.L., Inc. and Span, LLC; and William D. Kenison appeared for Defendants and moving parties, County of Riverside and R. Wayne Watts, Tax Collector.

After full consideration of the evidence set forth in the papers submitted, the Court finds that Plaintiff's Complaint to Quiet Title, Cancel Tax Deeds, Deprivation of Rights, Privileges or Immunities Secured by the Constitution, and Declaratory Relief, is barred as a matter of law by Section 3725 of the California Revenue and Taxation Code in that the action was not filed within one year after the execution of the tax deeds by Tax Collector. The Court's determination is set forth in the court reporter's record of the hearing on the motion, as required by Code of Civil Procedure section 437c(g).

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the motion for summary judgment is GRANTED and that this judgment of dismissal of the complaint

shall be entered forthwith against Plaintiff, Hillcrest Development, a California Limited Partnership, which shall recover nothing from defendants. The cross-complaint is hereby severed.

Dated: AUG 04 1998

/s/
Richard G. Van Frank
Judge of the Superior Court

APPROVED AS TO FORM:
LAW OFFICES OF
RONALD K. VAN WERT

Dated: July 17, 1998

By: /s/
Ronald K. Van Wert for
Plaintiff, Hillcrest
Development, a
California Limited
Partnership

REID & HELLYER
a PROFESSIONAL
CORPORATION

Dated: July 20, 1998

By: /s/
James J. Manning, Jr.
Attorneys for
Defendants/Cross-
Complainants N.R.L.L.,
Inc., and SPAN, LLC

FILED
FEB -2 2000

Frederick K. Ohlrich Clerk
Deputy

Fourth Appellate District, Division Two, No. E023512
S084297

IN THE SUPREME COURT OF CALIFORNIA
EN BANC

HILLCREST DEVELOPMENT, Appellant

v.

COUNTY OF RIVERSIDE Et Al., Respondents

Appellant's petition for review DENIED.

/s/ CHIN
Acting Chief Justice

1. The complaint also named Land Disposition Company as a defendant. Apparently this is a fictitious business name used by NRLL, rather than a separate entity.

2. We hereby grant NRLL and SPAN's request for judicial notice of their request for dismissal.

3. "Parties of interest" are defined as "any person with title of record to all or any portion of the property," together with all "lienholders of record." (Rev. & Tax Code, § 4675.)

4. We note — but need not resolve — the lurking question of whether Hillcrest lost whatever rights to invalidate the sale it may have had by claiming and accepting the excess proceeds.